IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 23305 of 2007(Y)

PETITIONER:

THE BOARD OF MANAGEMENT OF THE KOTHAMANGALAM CO-OPERATIVE MARKETING SOCIETY LTD. NO.E.137, KOTHAMANGALAM, ERNAKULAM DISTRICT, REPRESENTED BY ITS PRESIDENT, JOSE THOMAS.

BY ADV. SRI.P.V.BABY

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL), ERNAKULAM.

2. THE KOTHAMANGALAM UNIT INSPECTOR, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL), KOTHAMANGALAM.

R1 BY GOVERNMENT PLEADER (SMT. ANU SIVARAMAN)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 23305 OF 2007 Y

Dated this the 3rd August, 2007

JUDGMENT

Petitioner challenges Ext.P3 and all further proceedings pursuant to Ext.P3. Ext.P3 is an order purported to be issued under Section 65 of the Kerala Co-operative Societies Act. Petitioner points out that there is no named Officer. Costs of the enquiry is not also indicated in Ext.P3. It is in violation of Rule 66 of the Kerala Co-operative Societies Rules, contends the learned counsel for the petitioner. He also points out that there were earlier attempts and Ext.P3 is a repetition of earlier order. Petitioner has already submitted its explanation to the Assistant Registrar against Ext.P4, submits counsel. Ext.P4 is dated 18.7.2007. He further submits that, in fact, hearing also was conducted. It is stated that the hearing took place on 30.7.2007. The Writ Petition also is filed on 30.7.2007. Learned Government Pleader would point out that it is true that there is an omission in not mentioning the name of the Officer in Ext.P3.

She further submits that the financial condition of the Society is very poor, which is why the cost is not mentioned in Ext.P3 and there is no intention to recover any amount as costs. She submits that as far as the earlier proceedings were concerned, they were only a routine inspection and certain defects were noticed and they were not rectified.

2. Learned counsel for the petitioner would also submit that the intention is to act on the basis of Exts.P3 and P4 and take action under Section 32 read with Section 65(6) of the Act. He submits that notice will not be issued to the petitioner.

3. It is true that there is no named Officer and the costs also is not mentioned in Ext.P3. But Ext.P3 is dated 21.6.2007. Pursuant to Ext.P4 dated 18.7.2007, petitioner has submitted objection and participated in a hearing. The Writ Petition was filed on 30.7.2007. In the facts of this case, where the petitioner has filed objection and also participated in a hearing, I feel that the petitioner should not be permitted to challenge Ext.P3 order which is, of course, dated 21.6.2007, particularly having regard

to the safeguards I intend to provide in the Judgment against any action which the petitioner apprehends under Section 32. As far as costs is concerned, I record the submission of the second respondent that he does not intend to recover any amount as costs, in view of the financial condition of the Society. As far as the apprehension based on Section 32 is concerned, I order that in case after considering the explanation of the petitioner to Ext.P4, action under Section 32 is contemplated, it can be done only after issuing a proper notice, and with full opportunity to the petitioner for hearing and producing such materials as the petitioner is advised to produce.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

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